CRIMINAL APPEAL No.188 OF 1988(D.B.)
With
CRIMINAL APPEAL NO.206 of 1988(D.B.)

Against the judgment and order dated 8th April, 1988 passed by Sri Laloo Prasad Singh, 4th Additional Sessions Judge, Nalanda in S.T. No. 71 of 1984.

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1. Bundi Choudahry
2. Krishna Choudhary
2. Mahesh Choudhary
4. Chhotelal Yadav
5. Nandey Pasi ---------- Appellants
(in Cr. Appeal No.188 of 1988)
6. Chandu Manjhi
7. Shree Manjhi
8. Jethan Manjhi
9. Ganauri Manjhi
10. Lal Keshwar Manjhi ---------- Appellants
(in Cr.Appeal No.206 of 1988)

Versus

The State of Bihar ---------- Respondent
(in both the cases).

For the Appellants: Mr. Binod Kumar Ambastha,
Amicus Curiae.

For the State : Mr. Lala Kailash Bihari Prasad,
Sr. Advocate & Public Prosecutor.

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P R E S E N T

THE HON'BLE MR. JUSTICE SUDHIR KUMAR KATRIAR

THE HON'BLE MR. JUSTICE MADHAVENDRA SARAN

S.K. Katriar,
&
Madhavendra Saran,JJ. The ten appellant in the two appeals are aggrieved by the judgment dated 8.4.1988, passed by the learned 4th Additional Sessions Judge,

Nalanda, in S.T. No. 71 of 1984 (State of Bihar Vrs. Chandu Mochi & Ors.), whereby appellant Nande Pasi has been convicted under section 302 of the Indian Penal Code and has been sentenced to undergo rigorous imprisonment for life. The remaining appellants, namely, Bundi Choudahry, Krishna Choudhary, Mahesh Choudhary, Chhotelal Yadav, Chandu Manjhi, Shree Manjhi, Jethan Manjhi, Ganauri Manjhi and Lal Keshwar Manjhi have been convicted under section 302, read with section 149, of the Indian Penal Code, and have been sentenced to undergo rigorous imprisonment for life. The convicted persons shall hereinafter be referred to as the appellant(s).

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2. According to the Fardbeyan of Brij Nandan Singh (P.W.10), recorded on 29.5.1983, at about 8 P.M., at Biharsarif Sadar Hospital that he had grown Onion plants on agricultural lands near the Harijan Toli, Gaurichak. On that day, at about 6.30 P.M., the cattle belonging to the Harijans were grazing and destroying the plants of the informant. His brother Jai Nandan Singh deceased had driven the cattle out of his fields away towards the Harijan Toli and was using abusive language against them, and was also warning them that they should not do such injustice to him. The appellants emerged using abusive language and variously armed. Appellants Nande Pasi and Bundi Pasi were armed

with Hasuli and Lautha, and the remaining appellants were armed with lathi and Paina, were using abusive language against the said Jai Nandan Singh, and had encircled him. On hearing Hulla, the informant (P.W.10), Bhaso Singh (P.W.4), Siya Saran Singh(P.W.6), and Bihari Singh (P.W.9), also assembled there. They saw that Krishna Pasi had caught hold of the left hand of Jainandan Singh, Mahesh Pasi was holding his right hand, and Chotelal Gope was holding his hairs on the head from behind. Bundi Pasi gave the order that "साला का मुड़ी काट दो", whereupon Nande Pasi who had Hasuli in his hand wanted to strike with his Hasuli on the neck which he warded off and landed on his left arm resulting in injury. This was followed by the second attack with Nande Pasi with his Hasuli on the right side of the chest, pierced it resulting in profuse bleeding and his brother fell down, and started trembling and became unconscious. This was followed by the third attack by Nande Pasi on his brother which hit his left wrist causing injury. The informant had taken his injured brother in a critical condition to Biharsharif Sadar Hospital. The appellants had then burnt their own hutments made of straw. His brother died in Sadar Hospital, Biharsarif, as soon as he reached there.

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3. Investigation commenced. The occurrence had taken place at 6.30 P.M. The Fardbeyan (Ext.5) was

recorded at the Sadar Hospital at about 8 P.M., and the inquest report (Ext7) was also prepared at that time. The dead body was forwarded for post-mortem which was conducted on 30.5.1983, at 5.45 A.M. Post-mortem was conducted by Chandradeo Sahay(P.W.1), who submitted his post-mortem report on 30.5.1983. A formal F.I.R. was drawn and was registered as Silao (Nalanda) P.S. Case No.123 of 1983, dated 29.5.1983, under section 302/34 of the Indian Penal Code. The appellants were arrested and charge sheets were submitted after conclusion of the investigation. Cognizance was taken and charges were framed against the ten appellants under sections 302/149 of the Indian Penal Code. Charges were also framed against appellants Bundi Pasi, Krishna Pasi, Mahesh Pasi and Chotelal Yadav under section 302/34 of the Indian Penal Code. Charge sheet was submitted against appellant Bundi and Nande under section 302 of the Indian Penal Code. The charges were framed by the learned 4th Additional Sessions Judge on 18.6.1984.

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4. The prosecution examined the following 11 witnesses to prove the charges:

(i) P.W.1 is Dr. Chandra Deo Sahay, the Civil Assistant Surgeon, Sadar Hospital, who had conducted the post-mortem on the

dead body of the Jai Nandan Singh on 30.5.1983.

(ii) P.W.2, Anandi Singh, is a witness to the seizure list of blood-stained earth.

(iii) P.W.3 Ram Charitra Singh, is another witness to the seizure list of blood-stained earth.

(iv) P.W.4, Bhaso Singh, is a co-villager and an eye-witness.

(v) P.W.5, Ghanshyam Singh, is another co-villager and an eye-witness.

(vi) P.W.6, Siya Saran Singh, is a co-villager and eye-witness.

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(vii) P.W.7, Narayan Singh is a tendered witness.

(viii) P.W.8, Nandu Singh, is a tendered witness.

(ix) P.W.9, Bihari Singh, is an eye-witness to the inquest report.

(x) P.W.10 is Brijnandan Singh, the informant and an eye-witness.

(xi) P.W.11 is Ram Suresh Pathak, the Investigating Officer.

5. The prosecution proved the following exhibits:-

(a) Exhibit-1- Post-mortem report, proved by P.W.1.

(b) Exhibit-2-Signature of P.W.2 on blood-stained earth.

(c) Exhibit-2/1- Signature of P.W.3 on seizure-list of blood-stained earth.

(d)Exhibit-2/2-Signature of P.W.4 on the inquest report.

(e)Exchibit-2/3-Signature of P.W.8 on the inquest report.

(f)Exhibit-3- Signature of P.W.6 on the seizure-list of blood-stained clothes.

(g)Exhibit-3/1- Signature of P.W.7 on seizure-list of blood-stained clothes.

(h) Exhibit-4- Signature of P.W.10 on Fardbeyan.

(i) Exhibit-5- Fardbeyan of P.W.10 written in the hand-writing of P.W.11 and proved by him.

(j) Exhibit-6- Signature of P.W.11 on Ext.5 and proved by P.W.11.

(k) Exhibit-7- Inquest report proved by P.W.11.

(l) Exhibit-8- Seizure list proved by P.W.11.

(m)Exhibit-8/1- Seizure list of blood-stained earth proved by P.W.11.

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6. The defence examined one witness, namely, Sudama Prasad Singh (D.W.1). The following documents were marked exhibits on behalf of the defence:

Exhibit-A- Entry No.483 of case diary

Exhibit-A/1- Entry no.485 of case diary

Exhibit-B- Injury report of Bundi Pasi

Exhibit-C- Written report of G.R. Case No.818/83, proved by D.W.1.

Exhibit-D- Formal F.I.R. of G.R.818/83 proved by D.W.1.

7. On a consideration of the materials on record, the learned trial court held that the genesis of the

occurrence was that the cattle of the appellants were grazing the onion crops and other plants of the deceased. He had driven away the cattle towards the Harijan Tola, using abusive language against the appellants, and had warned them for doing that kind of injustice. The learned trial court also held that the prosecution has been able to prove the mode and manner of the occurrence as stated in the Fardbeyan. Krishna Pasi was holding the left hand of the decased, Mahesh Pasi was holding his right hand, Chotelal was holding his hairs of head from behind, Bundi Pasi was the order-giver, and Nande Pasi had delivered three Hasuli blows on the deceased resulting in his death. He has further held that the prosecution case was fully supported by the medical evidence. The appellants have been convicted and sentenced in the aforesaid manner. Hence this appeal at the instance of the convicted persons.

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8. Learned Public Prosecutor has submitted that the convictions and sentences are fit to be maintained.

9. P.W.1 is Chandra Deo Sahay who was posted as Civil Assistant Surgeon in the Sadar Hospital, Biharsharif on the date of occurrence. He conducted post-mortem on the dead body of Jainandan Singh on 30.5.1983, at 5.45 A.M. It was the dead body of a Hindu male, aged about 25 years. Rigor mortis was present in

all the limbs, and partially in the neck. He found the following ante mortem injuries on the dead body:-

"(i) one vertical punctured wound (margins sharply cut)- 3" x2 ½"x deep to thoracic cavity near and below the right nipple.

(ii) One incised wound- 2" x1"x1" on the base of left thinner eminence.

(iii) One horizontal incised wound 1"x1/2"x skin deep across middle and front of left fore-arm."

He has further deposed to the effect that on dissection, the 4th, 5th and 6th ribs of the right side were cut. The right lung (2 ½"), and liver (2"), were also cut. The thoracic cavity and abdominal cavity were full of blood. The stomach contained 20Z of partially digestive food. The chambers of heart were empty.

In his opinion, the death was due to shock and haemorrhage as a result of the aforesaid injuries. Injury no.(i) could have been caused by Hasuli. The remaining injuries could also have been caused by Hasuli. The injuries were sufficient to cause death in ordinary course of nature. Death had taken place within 24 hours. He has proved his post mortem report marked Ext.1.

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He has stated in his cross-examination that injury nos. (ii) and (iii) individually or jointly could not have caused death. He ahs also stated that Hasuli is a carved weapon and will always cause carved injury.

It appears to us on a perusal of the deposition of P.W.1 that he appears to be a straight-forward witness, had done the post-mortem examination sincerely, and fully supports the prosecution case.

It appears that P.W.1 was examined on recall, and deposed to the effect that on 29.5.1983, at 11 P.M., he had examined one Bundi Choudhary, and had found the following injuries on his person:

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(i) one abrasion ½"x ½" on the outer aspect of left eye-brow.

(ii) one abrasion ½"x ½" on the left elbow.

(iii) One abrasion ¾"x ½" on the right knee.

(iv) one swelling 2" x 1 ½"on the right side of chest with suspected fracture of right coastal rib. I refer him for X'ray which was received on 31.5.83 which showed fracture of right 6th, 7th and 8th rib."

In his opinion, injury nos. 1 to 3 were simple but injury no.4 is grievous in nature. All the injuries were caused by hard and blunt substance. He

has proved the injury report of Bundi Choudhary marked Ext.D.

10. P.W.2 is Anandi Singh. He has stated in his examination-in-chief that the Investigating Officer had seized the blood-stained earth from the place of occurrence in his presence, which is close to the road going to Rajgir at Mahuabad More. The seizure list was prepared in his presence and he had affixed signature on it. He has proved his signature marked Ext.2.

He has stated in his cross-examination that the blood-stained earth was seized at 10.30 P.M. in his presence. He was there for about 5-10 minutes from before. He has given description of the place of occurrence and the shops nearby. He has also stated that the hutments of the Harijan Toli were found burnt.

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11. P.W.3 is Ram Charitra Singh. He has stated in his examination-in-chief that he was at Nalanda More at about 10.30 P.M. Sub-Inspector of Police of Nalanda police station had come. He had come with Fardbeyan about the death of Jai Nandan Singh. He has seized the blood-stained earth and prepared the seizure list in his presence. P.W.3 has affixed his signature on the seizure list marked Ext.2/1. The dead body of Jai Nandan Singh had been taken away to the hospital prior to the preparation of the seizure list.

He has further stated in his cross-examination that about 10-20 persons were present at the place of occurrence when the Investigating Officer had come.

12. P.W.4 is Bhasho Singh and is an eye witness. He has stated in his examination-in-chief that 29.5.1983 was a Sunday. It was 6.30 P.M., and he was at the bus stand at Nalanda More. While standing there, he had noticed that the cattle of the appellants were grazing the fields of Jai Nandan Singh deceased which he had driven away to the road side near the Harijan Toli. Houses of some of the appellants were close to it. The deceased Jai Nandan Singh started warning Chotelal Gope, other members of Manjhi's and Bundi Choudhary, whereupon Bundi Pasi, Nande Pasi, Krishna Pasi, Mahesh Pasi, Chandu Manjhi, Chotelal Gope, Jethan Manjhi, Lal Keshwar Manjhi and Shri Manjhi, ten persons altogether, arrived and encircled Jai Nandan Singh. He has given the description of the weapons possessed by the appellants. He then rushed towards that place and found that Krishna Pasi was holding the left hand of Jai Nandan Singh, Mahesh Pasi was holding his right hand, Chotelal Gope was holding the hairs of his head from behind, Bundi Pasi gave orders to kill, whereupon Nande Pasi started rubbing his Hasuli on the neck of Jai Nandan Singh which he warded off, and the Hasuli

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landed on his left hand. Nandey Pasi gave second Hasuli blow which landed on his chest on the right side, it pierced deep into his chest, resulting in profuse bleeding, he fell down and was trembling. Nandey Pasi delivered the third blow of Hasuli which hit on his left wrist. The remaining appellants were saying that Jai Nandan Singh should be done to death. Other persons assembled there and the appellants left the place. They took Jai Nandan Singh to Biharsarif Hospital for treatment but died on way. The doctor at the hospital declared him dead. The Sub Inspector of Nalanda police station went to the hospital and recorded the Fardbeyan of Brij Nandan Singh. He also prepared the inquest report of the deceased. P.W.4 had put his signature on the inquest report marked Ext.2/2.

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He has stated in his cross-examination that Brij Nanadan Singh is his cousin (Phuphera Bhai). He has given description of the place of occurrence which is by the side of the road. The houses of Manjhi's are to the east of the road. A Marpit had taken place in front of the house of Nande Pasi, by the east of the road. He had seen Jai Nandan Singh driving away the cattle from his land which were about 10 in numbers. He has further stated that while driving away the cattle from his land, Jai Nandan Singh was not using abusive language against the appellants but was warning them.

He had noticed that the huts were in burnt condition only after 5-10 minutes of the occurrence while they were putting Jai Nandan Singh in the Jeep to be taken to Biharsharif Hospital. He had noticed the appellants using abusive language against Jai Nandan Singh and other persons present there. He had denied the suggestion that, on 29.5.1983, in the evening, Brij Nandan Singh, Jai Nandan Singh, Binay Singh, Karu Singh had taken toddy at the shop of Bundi Pasi, had refused to make payment of the same, and had started abusing them when payment was demanded and had equally denied the suggestion that the prosecution party had thereafter burnt their houses. He has affirmed the statement made in his examination-in-chief as to the mode and manner of the occurrence and the part played by the appellants.

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P.W.4 has substantially supported the prosecution case, no major contradiction has been noticed in his deposition except that he has stated that Jai Nandan Singh had not used abusive language against the appellants after driving away the cattle. This was not a mere omission his part in his examination-in-chief, but he asserts this position in cross-examination.

13. P.W.5 is Ghanshyam Singh, a co-villager and claims to be an eye witness. He has stated in his

examination-in-chief that on 29.5.1983, at 6.30 P.M., he was at Nalanda More. The cattle belonging to the appellants were grazing the onion fields of Jai Nandan Singh. He had seen Jai Nandan Singh driving away the cattle from his land towards the Harijan Toli situate at Nalanda More and was warning them, upon which the appellants armed with lathi, lautha, Hasuli came there and encircled him. The appellant Nande Pasi was armed with Hasuli, and Bundi Pasi with lautha. The remaining appellants were armed with lathis. He alongwith others approached the place where Jai Nandan Singh had been encircled. Krishna Pasi was holding the left hand of Jai Nandan Singh, Mahesh Pasi was holding his right hand, and Chote Lal Yadav was holding his hairs from behind. Bundi Choudhary ordered to chop off the head of jai Nandan Singh, whereupon Nande Pasi attacked him with Hasuli which landed on his left arm causing injuries. Nande Pasi then delivered a Hasuli blow which pierced his chest on the right side causing severe injuries. Jai Nandan Singh fell on the ground and was shaking. There was profuse bleeding from his chest. All the appellants then said in one voice that he should be done to death, whereupon Nande Pasi attacked him with his Hasuli which landed on his left wrist. All the appellants ran to their houses. Brij Nandan Singh took Jai Nandan Singh to the hospital. He then noticed that

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the appellants had evacuated their houses of their belongings, and set the houses on fire. He had later on learnt that Jai Nandan Singh had passed away. He recognized all the appellants present in the dock except Jethan Manjhi who was absent and was representted through his counsel. He claimed to recognize Jethan Manjhi also.

He has stated in his cross-examination that his father and that of Brij Nandan Singh are full brothers. He was taking tea at Nalanda More when the occurrence and taken place. The Mushar Toli was situate about 50 yards from there. He has given a description of surrounding areas. He was not aware as to whom the cattle belonged but he realised it after Jai Nandan Singh had started warning the appellants. Jai Nandan Singh was using abusive language against the appellants while moving forwards. He has affirmed his deposition made during the course of examination-in-chief. Bundi Pasi has a toddy shop in his house. He was not aware as to who was managing the same. He was not aware whether or not the same was being managed by the female inmates. He has also given description of the manner in which Nande Pasi had pierced the Hasuli in the chest of Jai Nandan Singh. He had seen Jai Nandan Singh shaking his body before Nande Pasi had pierced his Hasuli in his chest, but he could not get away from the hold of

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the appellants. He did not make any attempt to save and protect Jai Nandan Singh because the appellants were variously armed. He was standing at a distance of about 10 Yards. He made attempts to go near Jai Nandan Singh but was frightened away by the display of lathis as a result of which he had withdrawn. None had approached Jai Nandan singh so long he was being assaulted. He had seen Jai Nandan Singh shaking after he had fallen on the ground and had not heard his voice. He had not accompanied Jai Nandan Singh to the hospital. He has denied the suggestion that he is falsely supporting the prosecution case because they are agnates.

P.W.5 has fully supported the prosecution case and the defence has not been able to extract any contradiction in his examination-in-chief. He had not seen the appellant Bundi Pasi receiving any Marpit. He appears to be a trustworthy witness.

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14. P.W.6 is Siya Saran Singh, is a co-villager, and claims to be an eye-witness. He was at Nalanda More on 29.5.1983, at about 6 P.M., and it was a Sunday. He had seen Jai Nandan Singh driving away the cattle from his onion fields which were 10-12 in number and included buffalo, cow, calf. He had brought the cattle near the Harijan Toli. Jai Nandan Singh was using abusive language against the appellants while he was driving away the cattle. He had not heard him naming

any person while warning the appellants. At this point of time, the appellants, Bundi Pasi, Nande Pasi, Krishna Pasi, Mahesh Pasi, Chote Lal Gope, Chandu Manjhi, Ganauri Manjhi, Jethan Manjhi, Sri Manjhi, Lalkeshwar Manjhi arrived there. Bundi Pasi had a Lautha in his hand, and Nande Pasi had a Fasuli in his hand. All of them encircled Jai Nandan Singh whereafter Mahesh Pasi had held the right hand of Jai Nandan Singh, Krishna Pasi had held his left hand and Chotelal Gope had held his hairs from behind. Bundi Pasi gave orders that "साले का मुड़ी काट लो", whereupon Nande Pasi assaulted Jai Nandan Singh with his Hasuli on his neck. He was able to ward off the attack which landed on his left arm causing injuries and bleeding, and blood started flowing. Nande Pasi attacked him for the second time with his Hasuli which pierced his chest on the right side as a result of which he started shaking and fell down in an injured condition with bleeding injuries. All the appellants then said that he was still alive and he should be done to death, whereupon Nande Pasi delivered the third Hasuli blow which struck his left wrist. Many persons assembled there and the appellants fled away. He alongwith Brij Nandan Singh, Narayan Singh, and others took Jai Nandan Singh to the Biharsharif hospital. He died on way to the hospital and the Doctor at the hospital declared him brought

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dead. The police Officer of Nalanda police station arrived some time thereafter. He had seized the full-sleeved Kurta from the body of the deceased and prepared the seizure list, and P.W.6 had put his signature on the same which has been marked Ext.3. He is conversant with the signature of Narayan Singh which he had recorded in his presence and marked Ext.3/1. He identified all the appellants present in the dock, and also said that Jethan Manjhi was not present. Jethan Manjhi was on representation and claims to identify him also. By the time the injured Jai Nandan Singh had left the place of occurrence by jeep for the hospital, the appellants had evacuated their houses of their belongings and set their houses on fire.

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He has stated in his cross-examination that he is the first cousin of Brij Nandan Singh. He was taking tea at Nalanda More at the time of the occurrence. The distance from where he was taking tea and the onion fields where the cattle were grazing were separated by only 150 Gaj. He had seen about 10-12 cattle. He has reiterated the version as stated by him during the course of the examination-in-chief. He has also given description of the area surrounding the place of occurrence. The appellants were wielding lathis so that nobody could come near them. He had not seen appellant Bundi Pasi sustaining any Marpit.

P.W. 6 has fully supported the prosecution case and no contradiction has emerged in the whole of his deposition.

15. P.W.7 is Narayan Singh and is a tendered witness. P.W.8 is Nandu Singh and has proved his signature on the inquest report marked Ext.2/3. He has stated that Jai Nandan Singh is his agnate. The defence declined to cross-examine him. P.W.9 is Bihari Singh and has been tendered.

16. P.w.10,Brij Nandan Singh, is the informant and the full brother of the deceased. He was, on 29.5.1983, which was a Sunday, at 6.30 P.M., at Nalanda More and noticed that his brother Jai Nandan Singh was driving away the cattle from his onion plantations. After Jai Nandan Singh had reached the house of Chotelal, he had heard the former (Jai Nandan Singh) using abusive language against the appellants and was also warning them. While he was so warning them, he had approached close to Bihar-Rajgir road, the appellants emerged variously armed and surrounded his brother. They were armed with Lathi, Paina, Lautha and Hasuli etc. Mahesh Pasi ,Krishna Pasi and Chotelal were un-armed. Chandu Manjhi, Sri Manjhi, Lalkeshwar Manjhi, Jethan Manjhi and Ganauri Manjhi were yielding lathis, by the time he reached his brother he had already been surrounded by the appellants. Krishna Pasi had held the

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left arm of Jai Nandan Singh, Mahesh pasi was holding his right hand, and Chotelal was holding his hairs from behind. Bundi Pasi then gave orders to chop off the head of Jai Nandan Singh, whereupon Nande Pasi attacked Jai Nandan Singh from his Hasuli which he had warded off and landed on his left hand causing injuries and bleeding. Nande Pasi then delivered the second blow which landed on his right chest causing deep wound as a result of which he fell down. The remaining appellants said that he was still alive and should be done to death which was followed by the third attempt by Nande Pasi which struck his left wrist. The appellants then returned to their houses. When he approached Jai Nandan Singh, he found him shaking. A Jeep had approached from Rajgir side, and Jai Nandan Singh was taken by the same to Biharsharif hospital. Jai Nandan Singh was accompanied by the informant, Bhasho Singh, Ghanshyam Singh, and Siya Singh. He died on way to the hospital. Ghanshyam Singh, Bhasho Singh, Bihari Singh, Budhan Mahto and Siya Singh were present at the time of the occurrence. When he was loading his brother in the Jeep, the appellants were setting their houses on fire. The doctor declared him brought dead. After half an hour, at about 8 P.M., the police of Nalanda police station arrived in the hospital and had recorded the Fardbeyan which was read over and in token thereof he

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put his signature marked Ext.4. The Police Officer inspected the dead body, prepared the inquest report, and has made seizure list of his clothes. The dead body was referred for post-mortem. He returned to his residence. Soon after he had reached his residence, the Police Officer of Nalanda police station had reached the place of occurrence. He identified all the appellants present in the dock. He has also stated that the prosecution witness, Budhan Mahto, was in collusion with the appellants, as he had seen him conniving with them.

He has stated in his cross-examination that the onion plantations which were being grazed by the cattle were not fully grown. The portion of the land where the cattle were grazing was half occupied by onion plantations, and the rest by other plants. He has given a description of the surrounding areas. He has reiterated in his cross-examination that Jai Nandan Singh was using abusive language against the appellants and was also warning them. The appellants in reply emerged variously armed and had also started abusive language against Jai Nandan Singh. His brother was holding a Chekuni. He could not run away because he had been surrounded by the appellants who had surrounded him within two minutes. He has further stated that Nande Pasi had attacked the appellants with his Hasuli

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in the manner of a sword and pierced it . He had denied the suggestion that his Fardbeyan is false and is meant to counter the appellants case.

P.W.10 has fully supported his case set out in the Fardbeyan and the defence, in its lengthy cross-examination, has not been able to elicit any contradiction of consequence. His evidence is also noticeable for the reason that he has given exact description in which the second Hasuli blow struck the deceased. He has stated that "पहला वार नंदे पासी ने जयनन्दन सिंह पर आगे से जैसे तलवार से वार किया जाता है उसी प्रकार किया मैंने नंदे पासी को जयनंदन सिंह का गला रेतते नहीं देखा था" He is the lone witness who has stated that Jai Nandan Singh at the time of the occurrence was holding a Chekuni.

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17. P.W.11 is Ram Suresh Pathak, was a Sub Inspector of Police of the Nalanda Police station, and is the Investigating Officer. He has stated in his examination-in-chief that on 29.5.1983 he was posted as Sub-Inspector of Police at Nalanda police station. On 29.5.1983, while he was on patrolling duty and was near the Dalda Factory, he had noticed flames of fire near Nalanda More and had found the belongings kept outside. He did not take steps to put off the blazing fire and had learnt that the deceased Jai Nandan Singh has been killed by Nande Pasi and others and was taken to the hospital in dead condition by his men. He had also

learnt that the appellants had burnt their houses to protect themselves. He then proceeded to Biharsharif hospital where he learnt that Jai Nandan Singh had already passed away on way to the hospital. He recorded the Fardbeyan of Brij Nandan Singh at the hospital and registered it as a police case. The Fardbeyan had been read over to Brij Nandan Singh. It has been marked Ext.5, which bears his signature marked Ext.6. He prepared the inquest report at the hospital which marked Ext.7. He seized full-sleeved Kurta which Jai Nandan Singh was wearing with a hole pierced near the chest. The seizure list was marked Ext.8. He arrested the appellants in course of the cross-examination. He also inspected the place of occurrence and seized the blood-stained earth, and the seizure list has been marked Ext.8/1.A lot of blood had fallen on the ground. He has given the description of the place of occurrence and the surrounding areas including the place where the cattle were grazing. He had then taken statement of the witnesses on 30.5.1983. He organized Kurki Japti of these persons on 7.6.1984. He had done Kurki Japti of the properties of Chandu Manjhi on 11.6.1984, but nothing was seized. He concluded the investigation and submitted charge-sheet. He was subjected to detailed cross- examination, and reaffirmed his statement in his

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examination. The defence has not been able to elicit any contradiction.

P.W.11 seems to have conducted the investigation promptly, recorded the Fardbeyan, prepared inquest report and forwarded the dead body for post-mortem promptly. He had also seized the blood-stained Kurta of the deceased then and there and had visited the place of occurrence, made detailed inspection and had also seized blood-stained earth.

18. The appellants in their statement under section 313 of the Code of Criminal Procedure denied the occurrence and stated that they have been falsely implicated. Specific question was put to all the appellants with respect to the post-mortem and the Doctor's evidence which they denied.

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19. The defence examined Sudama Prasad Singh in support of its case. He was a literate constable in Hilsa police station. He was posted as such on 29.5.1983, and Abdul Rahman was the Thana Incharge. Nand Lal Choudhary and Chote Lal Choudhary had met him on that day. He has proved the written report of Chote Lal Choudhary given at the behest of Nand Lal Choudhary which is in the hand writing of D.W.1, and Nand Lal Choudhary affixed his signature in his presence. The entire report is marked Ext.C. The formal F.I.R. has been marked Ext.D. He was subjected to a brief cross-

examination. Abdul Rahman was still in service. Chote Lal Choudhary is still alive. The formal F.I.R. does not bear his signature.

20. On a perusal of the materials on record, the learned trial court held that the grazing of onion plantations and other plants belonging to the deceased was the genesis of the occurrence. He also found that the deceased had driven away the cattle, had started abusing abusive language against the appellants, and was warning them. The appellants had emerged from their houses situate close by variously armed, had encircled Jai Nandan Singh, and had murdered him in the manner stated in the Fardbeyan. He has further found that the prosecution case is supported by the post-mortem report. He, therefore, convicted and sentenced the appellants in the aforesaid manner. Hence this appeal at the instance of the appellants.

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21. Learned counsel for the appellants has submitted that the prosecution case is concocted and unbelievable. P.W.4, 5, 6 and 10 are not really eye witnesses to the occurrence. He next submits that the prosecution witnesses are first cousins, very closely related and are highly interested witnesses. He next submits that, according to the prosecution case, a number of shops were functional, close to the place of occurrence, and a number of co-villagers had assembled

there, notwithstanding which not one independent witness has come forward to depose. He next submits that the place of occurrence has been rendered doubtful. According to the Fardbeyan, murder was committed near Harijan Toli whereas the witnesses have stated that it had taken place at Biharsharif-Rajgir road. He next submits that the evidence with respect to the mode and manner of occurrence is also contradictory and untrustworthy. He also submits that the Doctor's evidence does not support the prosecution case. The injuries have not been explained. He has relied on the judgment reported in 2008(3) SCC 709(Babu Ram and others Vrs. State of Punjab). He also submits that the prosecution case is full of innumerable contradictions, for example, some of the witnesses have stated that the dead body was taken to Thana and then to the hospital, whereas others have stated that it was taken to straight to the hospital. He has lastly submitted that the present case is a counter-blast to the cases of the appellants started against the prosecution party, vide Exts.C and D. In his submission, a combined reading of Exts.C and D, and the deposition of D.W.1, establishes that the appellants had started a case against the prosecution party and had prior to the present case.

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22. Learned Public Prosecutor has submitted that the prosecution had acted with utmost swiftness

excluding all possibility of false implication. He further submits that the informant had given names of P.W.4, 5 and 6 as eye witnesses in the Fardbeyan. He next submits that the place of occurrence has been established beyond doubt. The prosecution has been able to convincingly prove the genesis of the occurrence. He next submits that the mode and manner of occurrence has been proved by consistent evidence which is fully supported by the medical evidence. In his submission, there is no onus on the prosecution to explain the injuries. It was open to the defence to put questions to the prosecution witnesses seeking explanation with respect to the injuries. He has relied on the judgment reported **in 2002 SCC (Cri) 1608(Amar Malla and others Vrs. State of Tripura).** He lastly submits that non-examination of the independent witness is not of much consequence. The reliability of the prosecution witnesses is really of consequence. He submits in the same vein that the people who are not directly affected with the crime tend to keep away because of the harassment by the police and courts. He has relied on the judgment reported in **2003(4) P.L.J.R. 475(The State of Bihar Vrs. Ram Krishna Singh @ Ramu Singh).**

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23. We have perused the materials on record and considered the submissions of learned counsel for the parties. First thing first. The prosecution case is,

which has been proved by consistent evidence of eye-witnesses, namely, P.Ws.4, 5, 6, and 10, that Jai Nandan Singh had grown onion plantations and other plants on his agricultural lands. The same was situate not far away from the Harijan Toli, the home and hearth of the appellants. The latter appear to be engaged in toddy-tapping and sale thereof. One of them sells it in his own house. On the fateful day, shortly before 6.30 P.M., cattle numbering 10-12 belonging to the appellants were grazing the said crops of Jai Nandan Singh. He had driven away the cattle from his lands towards the Harijan Toli, was using abusive language against them, and was warning them for such an act of injustice. It appears to us on a plain reading of the entire materials on record that Jai Nandan Singh fell in trouble mainly because he was using abusive language against the appellants, which seems to have infuriated the appellants who emerged with utmost alacrity variously armed, and started using abusive language against Jai Nandan Singh in retaliation. The stage was set for the crime.

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24. The grazing of onion plantations and plants of Jai Nandan Singh, his source of livelihood, was threatened by such thoughtless act of the appellants, who (Jai Nandan Singh) not only drove away the cattle, not only warned the appellants, but also condemned them

in foul language. This was enough to put the appellants in action. Foul language has a great impact for retaliation, and it is a common experience in our villages for people to use unspeakable and un-printable words against others to vent their anger. Gone are the days when Harijans and members of the scheduled caste were weak, meek and humble, and are now prepared to resist all atrocities against them. They are feeling empowered by the message of social justice, and many with feudal mentality are failing to read the message of social justice and the writings on the wall. We have, therefore, no manner of doubt as to the genesis of the occurrence leading to the ghastly crime. Foul language used by Jai Nandan Singh was enough of a provocation for the appellants to commit the crime, which are not trying to justify, but only trying to ascertain the genesis of the occurrence. The genesis of the occurrence is thus writ large on it.

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25. We entirely agree with the learned Public Prosecutor that the Investigating Officer acted with utmost promptitude. The occurrence had taken place at 6.30 P.M., near Nalanda More. There is no material on record to suggest the distance from Nalanda More to Biharsharif hospital. Learned counsel for the parties submit that Nalanda More should be situate at a distance of about 15 to 20 K.M. from Biharsharif

Hospital. P.W.10 has stated in his cross-examination that a Jeep had approached Nalanda More from Rajgir which facilitated shifting of Jai Nandan Singh to the hospital who reached there at about 8 P.M. P.W.11 has stated that he was at that point of time on mobile duty and noticed raging fire which attracted his attention and he rushed to that place to be informed that Jai Nandan Singh had been brutally assaulted and had been taken to the Biharsharif Hospital. P.W.11 rushed to the hospital and found him dead. Without wasting time, he promptly recorded the Fardbeyan of P.W.10, prepared the inquest report, obtained signature of two eye witnesses who are prosecution witnesses here. He also seized the Kurta on the body of the deceased, prepared the seizure list, and obtained the signature of two witnesses. He also referred the dead body for post-mortem. All this was perhaps over within a period of one hour or less. P.W.1 has stated in his deposition that he had conducted the post mortem-examination at 5.45 A.M. the following day, on 30.5.1983. We are, therefore, convinced that the Investigating Officer acted with alacricity, and once again and without wasting any time he had rushed to the place of occurrence for inspection and had also seized the earth soaked with blood of the deceased, and had prepared the seizure list at about 10.00 P.M. As stated hereinabove, the Fardbeyan of

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P.W.10 was recorded in the hospital at about 8 P.M., and the informant had stated the names of P.Ws.4, 5 and 6 as eye witnesses. In such a situation, things were happening with great speed which speaks of the efficiency of the investigating agency, there was no time for anybody to make a false statement or to implicate anybody falsely. We are, therefore, convinced that the investigation commenced with utmost promptitude eliminating all chances of false implication.

26. This takes us on to the question of the mode and manner of the occurrence. The prosecution case set out in the Fardbeyan, recorded without the slightest delay, has been fully supported by the consistent evidence of four eye witnesses, namely, P.Ws. 4, 5, 6 and 10. It is the consistent and unshaken evidence of the prosecution that the appellants let loose their cattle which were grazing the fields of Jai Nandan Singh. This had infuriated him because his source of livelihood was jeopardized, and he drove away the cattle towards the Harijan Toli, the home and hearth of the appellants, accompanied with abusive language against the appellants and warnings, which had enraged the appellants who emerged from their houses situate in the Harijan Toli, not far away from the onion fields, variously armed and started using abusive language

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against Jai Nandan Singh in retaliation. They immediately surrounded him. It is further the consistent evidence of the prosecution that Krishna Pasi had held his left hand, Mahesh Pasi had held his right hand, and Chotelal Gope had held his hairs from behind, which cumulatively rendered Jai Nandan Singh immobile and incapable of any resistance. Bundi Pasi thundered, '*साला का मूडी काट दो*'. Having received the order, Nande Pasi delivered his first blow with his Fasuli intended to chop off his neck which he was able to ward off by shaking off his body as a result of which the Fasuli blow landed on his left arm causing injuries and bleeding. The unrelenting Nande Pasi had delivered his second Fasuli blow in the manner of Bhala blow which landed on the right side of his chest, pierced it causing 3" deep and 2½" in width grievous injury and profuse bleeding. Jai Nandan Singh found it impossible to continue to be on his legs any further, fell down on the ground, his body shaking with shock and haemorrage, being the last flicker of his life. Equally, consistent evidence of the prosecution is that the appellants who had surrounded him, and were closely watching him, noticed that his body was shaking on the ground creating the impression that he was still alive and all of them shouted in once voice that he had to be done to death. Nandey Pasi took the orders of the crowd and

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delivered the third and the final blow which struck his left wrist. The crime was complete, vengeance was fully satisfied, and the appellants returned to their huts victorious. We have not been able to discern any contradiction in the prosecution case set out in the Fardbeyan on the one hand, and the deposition of the eye witnesses, on the other, except that P.W.4 has omitted to mention in his deposition, perhaps purposely, that Jai Nandan Singh was using abusive language against the appellants, and has only stated that he was warning the appellants of injustice being done to him. This may be a feeble attempt on his part to show that Jai Nandan Singh was not in the least responsible for the crime. This does not weaken the prosecution case with respect to the issue relating to the mode and manner of occurrence, and may have a minor, insequential effect on the issue relating to the motive for the crime. We are, therefore, convinced on a perusal of the prosecution case , as to the mode and manner of the occurrence as set out in the Fardbeyan, has been convincingly proved by the consistent evidence of the eye-witnesses..

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27. The prosecution case is also supported by the deposition of P.W.11 (the I.O.) who was at that point of time on mobile duty and had rushed to the place of occurrence because he had noticed flames. This

was soon after P.W.10 had taken Jai Nandan Singh to the hospital, and the I.O. was informed by the local people that Jai Nandan Singh had received grievous injuries at the hands of the appellants. We are mindful of the position that P.W.11 is not an eye witnesses, but he had heard of the involvement of the appellants just after the occurrence had taken place, giving little time to the persons present there to make out a different case. We have already discussed hereinabove that the investigating agency acted with utmost promptitude and commenced investigation quickly, excluding all possibility of false implication.

28. The prosecution case is fully supported by the medical evidence. P.W.1 has found three injuries on the dead body. Discussing in the order mentioned in the post-mortem report, the first injury had seriously injured two vital organs causing profuse bleeding, and was enough to cause death in the routine course. According to the Doctor, injury nos. 2 and 3 neither individually nor collectively could have caused the death. The same obviously acted in supplement to injury no.1 and enhanced the chances of death by shock and hemorrhage. The nature of injuries found in the post-mortem report are fully consistent with those mentioned in the Fardbeyan, and stated in the evidence of the eye-witnesses.

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29. We must at this stage consider the submission advanced by the learned counsel for the appellants that Nande Pasi had inflicted injuries with his Fasuli which is a curved weapon, but injury was not found by the Doctor. It is submitted that the first injury, being the fatal one, could not have been caused by a curved weapon like Fasuli, is not supported by the medical evidence and renders the prosecution case unbelievable. In his submission, therefore, the appellants are entitled to the benefit of doubt. Before examining this contention, I would like to clarify that, according to the prosecution case, the first injury was on the left hand, the second one had injured the chest on the right side, and the third one injured the left wrist. The Doctor in his post-mortem report has stated the injury on the chest as the first injury. For the present purpose, we shall also state the injuries in the manner stated in the post-mortem report. P.W.1 indeed was subjected to cross-examination on this point and he has stated as follows in his cross-examination:-

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> "In my opinion, death was due to shock and heamorrhage as a result of injuries noted above. Injury no.(i)could have been caused by 'HASULI'. The remaining injuries could also be caused by HASULI. The injuries were sufficient to cause death in ordinary course."

30. It is thus obvious that the Doctor is of the opinion that the first and the fatal injury would have

been caused by a Fasuli. Fasuli was undoubtedly not shaped like 'U'. The evidence on record is that it is a gently carved sharp weapon with blade of ½" to 1" from tip to base. It is quite clear that tip of the Fasuli was not so sharply carved so as to render it incapable of penetrating 3" in the flesh. P.W.10, an eye witness, has also stated in his deposition that Nande Pasi had delivered the Fasuli blow in the manner of a Bhala. In other words, the tip of the Fasuli was 1/2" in width, was capable of penetrating the soft thoracic region without any difficulty. We are, therefore, convinced that injury no.1 was possible by the kind of Hasuli wielded by Nande Pasi, and is fully supported by the evidence of P.W.1. The contention of the appellants is rejected.

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31. This takes us on to the last contention raised on behalf of the appellants, namely, independent witnesses have not been examined. Law is well settled that non-examination of independent witnesses does not by itself is fatal to the prosecution case. Reliability of the prosecution witnesses is of the greatest importance and value. We have found hereinabove that the eye witnesses are worthy of reliance who have consistently deposed in support of the prosecution case, and is equally supported by the evidence of the Doctor and the Investigating Officer. Furthermore, it is common

experience that eye witnesses, who are not directly concerned with the injured or the deceased, want to keep away in order to avoid the harassment of police and courts. Law is well settled that, in such a situation,the kind and quality and reliability of the prosecution witness assumes great significance. Once the commission of the crime has been proved by trustworthy witnesses, even though they are related to the victim, the prosecution case shall not fail on the ground of non-examination of independent witness.

32. The Supreme Court has held as follows in paragraph 11 of the judgment reported in **A.I.R. 1988 SC 696 (Appabhai and another Vrs. State of Gujrat):**

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> "In the light of these principles, we may now consider the first contention urged by the learned counsel for the appellants. The contention relates to the failure of the prosecution to examine independent witnesses. The High Court has examined this contention but did not find any infirmity in the investigation. It is no doubt true that the prosecution has not been able to produce any independent witness to the incident that took place at the bus stand. There must have been several of such witnesses. But the prosecution case cannot be thrown out or doubted on that ground alone. Experience reminds us that civilized people are generally insensitive when a crime is committed even in their presence. They withdraw both from the victim and the vigilante. They keep themselves away from the Court unless it is inevitable. They think that crime like civil dispute is between two individuals or parties and they should not involve themselves. This kind of a pathy of the general public is indeed unfortunate, but it is there every where whether in village life, towns or cities.

> One cannot ignore this handicap with which the investigating agency has to discharge its duties. The Court, therefore, instead of doubting the prosecution case for want of independent witness must consider the broad spectrum of the prosecution version and then search for the nugget of truth with due regard to probability, if any, suggested by the accused. The Court, however, must bear in mind that witnesses to a serious crime may not react in a normal manner. Nor do they react uniformly. The horror stricken witnesses at a dastardly crime or an act of egregious nature may react differently. Their course of conduct may not be of ordinary type in the normal circumstances. The Court, therefore, cannot reject their evidence merely because they have behaved or reacted in an unusual manner. In Rana Pratap V. State of Haryana (1983) 3 SCC 327 : (AIR 1983 SC 680) O. Chinnappa Reddy J. speaking for this Court succinctly set out what might be the behaviour of different persons witnessing the same incident. The learned Judge observed (at P.330) (of SCC): (at 682 of AIR):
>
> > "Every person who witnesses a murder reacts in his own way. Some are stunned, become speechless and stand rooted to the spot. Some become hysteric and start wailing. Some start shouting for help. Others run away to keep themselves as far removed from the spot as possible. Yet others rush to the rescue of the victim, even going to the extent of counter attacking the assailants. Every one reacts in his own special way. There is no set rule of natural reaction. To discard the evidence of a witness on the ground that he did not react in any particular manner is to appreciate evidence in a wholly unrealistic and unimaginative way."

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32. In the result, these appeals fail and the impugned conviction and sentence are maintained. We hold appellant Nande Pasi guilty of the murder of Jai

Nandan Singh in terms of section 302 of the Indian Penal Code, and sentence him to undergo rigorous imprisonment for life. The remaining appellants are convicted under section 302 read with section 149 of the Indian Penal Code and are also sentenced to undergo rigorous imprisonment for life. Their bail bonds are cancelled and they are directed to surrender before the learned trial court to serve out the remaining period of their sentences.

33. The Secretary High Court Legal Services Committee, Patna, shall ensure payment of Rs.5,000/- (rupees five thousand) to Mr.Binod Kumar Ambastha, learned counsel, for assisting this Court as Amicus Curiae.

34. Let copies of the first and the last pages of the judgment be handed over to the learned Amicus Curiae.

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(Sudhir Kumar Katriar, J.)

(Madhavendra Saran, J.)

High Court Patna,
Dated the 16th day of September, 2008.
Vinay/ A.F.R.

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